

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.10189 OF 2000

ORDER:

The petitioners herein, claim to be in possession and enjoyment of Ac.0.69 cents of agricultural land situated in R.S.No.287/6 of Sanarudravaram, Kalidindi mandal, Krishna district. It is stated that the said land was originally purchased by the mother of the 2nd petitioner by name D. Veera Raghavamma under four different sale deeds dated 9.1.1962; 31.1.1963; 9.6.1966 and 31.5.1984. The said Veera Raghavamma gifted the said land in favour of her daughter, the 2nd petitioner herein, at the time of her marriage towards pasupukumkuma in the year 1984 and since then, the 2nd petitioner and her husband, the 1st petitioner herein, have been in possession and enjoyment of the said land duly paying the land revenue regularly. While so, in the month of March, 1997, the 1st petitioner was served with notice dated 20.3.1997 issued by the 2nd respondent-Mandal Revenue Officer, calling upon him to submit his explanation as to why he should not be evicted from the land in question alleging that the said land was a poramboke gramakhantam. Though the 1st petitioner submitted his explanation denying the allegation that it was a poramboke land, the 2nd respondent by order dated 10.9.1997 ordered eviction of the petitioners holding that the land in their occupation was classified as gramakhantam as per revenue records and, therefore, their occupation was illegal. Aggrieved by the same, the petitioners filed W.P.No.24777 of 1997, which was disposed of by this Court by order dated 10.7.1998 with a direction to the respondents to follow the procedure prescribed under the A.P. Land Encroachment Act, 1905 (for short "the Act") if the petitioners are liable to be evicted, and till such time they shall be allowed to continue in possession.

Thereafter, a fresh show cause notice dated 9.7.1999 under Section 7 of the Act was issued by the 2nd respondent calling upon the petitioners to show cause as to why they should not be evicted from the land in question. The petitioners submitted their explanation on 20.7.1999 stating that the land in question is their own land which was purchased by their predecessor-in-title long back under different registered sale deeds. It was also submitted that since, even according to the 2nd respondent, the land was classified as gramakhantam, the land should be deemed to have been vested with the Grampanchayat and, therefore, Grampanchayat alone can take steps for recovery of possession. However, the 2nd respondent without conducting any further enquiry, passed the order dated 8.6.2000 under Section 6 of the Act.

Hence, this writ petition seeking a declaration that the action of the 2nd respondent in directing eviction of the petitioners under the impugned order dated 8.6.2000, as arbitrary and illegal.

I have heard the learned counsel for the petitioners as well as the learned Government Pleader and perused the material on record.

The learned counsel for the petitioners while placing reliance upon the decision of the Supreme Court in Govt. of A.P v. Thummala Krishna Rao and another^[1], vehemently contended that since the petitioners are disputing the allegation that the land in question is classified as poramboke and made out a *prima facie* case to show their *bona fide* title, summary remedy prescribed under the Act cannot be resorted to. On the other hand, the learned Government Pleader contended that since as per Village Accounts the entire land in R.S.No.287/6 is registered as gramakhantam, the title claimed by the petitioners is untenable and that the impugned order of eviction has been rightly passed by the 2nd respondent.

In the counter-affidavit filed on behalf of the respondents, it is stated that though it is true that the land, which is classified as

gramakhantam, is vested with the Grampanchayat, the impugned proceedings have been initiated on the basis of a representation dated 1-7-1999 made by the Grampanchayat, through its Sarpanch requesting the Revenue Department to evict the encroachers from the land so as to provide house-sites to poor harijans of the village. Accordingly, following due process of law, the petitioners were evicted and the land in question was handed over to the Grampanchayat on 17.6.2000. Thereafter, a resolution was passed by the Grampanchayat on 19.6.2000 to provide the land in question to harijans of the village. It is further stated that even in the sale deeds in favour of the petitioners the land in question was described as gramakhantam and, therefore, the petitioners cannot claim to have acquired any valid title.

There can be no dispute about the ratio laid down by the Supreme Court in Govt. of A.P v. Thummala Krishna Rao and another (1 supra) that the question of title to the land in question cannot be decided in a summary enquiry contemplated under the provisions of the Act.

Having considered the scope and object of the provisions of the Act, in the above decision it was held as under:

“.....In regard to property described in sub-sections (1) and (2) of Section 2, there can be no doubt, difficulty or dispute as to the title of the Government and, therefore, in respect of such property, the Government would be free to take recourse to the summary remedy of eviction provided for in Section 6. A person who occupies a part of a public road, street, bridge, the bed of the sea and the like, is in unauthorized occupation of property which is declared by Section 2 to be the property of the Government and, therefore, it is in public interest to evict him expeditiously, which can only be done by resorting to the summary remedy provided by the Act. But Section 6(1) which confers the power of summary eviction on the Government limits that power to cases in which a person is in unauthorized occupation of a land “for which he is liable to pay assessment under Section 3”. Section 3, in turn, refers to unauthorized occupation of any land “which is the property of Government”. If there is a bona fide dispute regarding the title of the Government to any property, the Government cannot take a unilateral decision in its own favour that, the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by Section 6 for evicting the person who is in possession of the property under a bona fide claim or title.”

In the case on hand, the petitioner claimed title under different registered sale deeds executed from the year 1962 onwards. Undoubtedly, occupation for a reasonably long time evidences a *prima facie*, *bona fide* claim to the property.

In the circumstances, the 2nd respondent while passing an order of eviction is expected to assign reasons to substantiate his conclusion that the ownership claimed by the petitioners was not *bona fide*. Though the Act provides for summary enquiry, it cannot be held that the authority can pass an order of eviction without disclosing the reasons.

In the impugned order absolutely no reasons were assigned by the 2nd respondent, except stating that the land in occupation of the petitioners belongs to the Government.

The law is well-settled that absence of reasons by a statutory authority is one of the grounds for judicial review, since failure to assign reasons would result in violation of principles of natural justice.

In the circumstances, without expressing any opinion as to the rival claims made by the parties, the impugned order is set aside and the writ petition is disposed of with a direction to the 2nd respondent to pass a reasoned order afresh in accordance with law. No costs.

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24.10.2007.

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THE HON'BLE Ms. JUSTICE G. ROHINI

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WRIT PETITION No.10189 OF 2000

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24th October, 2007.

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Between:

Boyina Satyanarayana and another. Petitioners.

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And

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The District Collector, Machilipatnam,

Krishna District and another. Respondents.

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[\[1\]](#) AIR 1982 SC 1081.